IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION (LODG.) NO.1152 OF 2007

Kulwant Singh Parmar and another ..Petitioners.
Vs.
Sher-e-Punjab Co-operative
Housing Society Ltd. and others ..Respondents.

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Mr. M.P. Vashi for the Petitioners.
Mr. R.A. Thorat for Respondent Nos.1 and 3.
Mr. Yadunath Chowdhari for Respondent No.4.
Mr. A.S. Desai for Respondent No.12.

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CORAM: **SWATANTER KUMAR, C.J. &**
DR. D.Y. CHANDRACHUD, J.

Judgment reserved on 6th September, 2007
Judgment pronounced on 28th September, 2007.

JUDGMENT (Per Dr. D.Y. CHANDRACHUD, J.) :

1. The First Respondent is a co-operative housing society deemed to be registered under the Maharashtra Co-operative Societies Act, 1960. The elections to the managing committee were held on 1st February, 2004 and the results are stated to have been declared on 7th February, 2004. The tenure of the managing committee was to expire in February 2007. By a government notification dated 16th November, 2006 elections to all co-operative societies were stayed from 16th November, 2006 till 31st March,

2007. By a resolution passed on 28th December, 2006 the managing committee requested the Deputy Registrar, Co-operative Societies, K-East Ward to conduct the election for the period 2007-08 to 2009-10. By a letter dated 18th January, 2007 the society requested the Deputy Registrar to appoint a Returning Officer. By a letter dated 2nd April, 2007 the Deputy Registrar appointed a Returning Officer.

2. On 23rd May, 2007 these proceedings were instituted under Article 226 of the Constitution seeking the following reliefs :

i) that the election programme including the provisional list of voters published on 13th May, 2007 be quashed;

ii) that the appointment of the Returning Officer to conduct the election on 24th June, 2007 be quashed;

iii) that the Deputy Registrar of Co-operative Societies be directed to take over the management of the society or appoint an administrator to hold the elections in accordance with law.

3. On 22nd June, 2007 the following order was passed by a Division Bench of this Court while posting the Petition after two

weeks :

> "In the mean while we direct the Registrar of Cooperative Societies to examine the claims of the main claimants and report to the Court whether any meeting of the members of the society was held or not and whether prior decisions were taken including the appointment of the Returning Officer. In the event even if no such returning officer is appointed in accordance with the provisions of sec. 73H of the Act still the Registrar would nominate the Returning Officer. The voting shall stand deferred for a period of two weeks and the Registrar's nominee to notify the date fixed and the polling shall be conducted on 1st July, 2007."

Subsequently on 6th July, 2007 this Court recorded that while the election to be held on 8th July, 2007 was not being deferred, the Returning Officer was directed to call upon the voters to prove their identity and to produce their share certificates in the event that there was any doubt in regard to the identity of the voters. This Court directed that the result of the election shall be declared but should be kept in a sealed cover and be produced before the Court on the next date of hearing. The results were produced before the Court in a sealed cover on 20th July, 2007. On 27th July, 2007 the sealed packet containing the results of the election was opened and resealed.

4. The resulting position as it emerges before the Court is that the elections have been held. We permit the results to be formally declared. The Returning Officer, Respondent No.12, has filed an affidavit dated 20th July, 2007 recording that on 8th July, 2007 he had conducted the election to the managing committee in accordance with the election programme. The Returning Officer has stated that as per the final list of voters published on 21st May, 2007 there were 1251 voters; 438 members participated in the election and voted. After the voting was concluded the votes were counted in the presence of contesting candidates and the counting sheet duly signed by all the candidates was placed in a sealed cover. The Returning Officer has stated that in accordance with the directions of this Court he did not permit even a single voter to vote in the election without identification of identity and whenever objections were taken by the Petitioner or others about the identity of a voter, the Returning Officer verified the identity and permitted a vote to be cast only after due satisfaction that the person was a genuine voter. For the purposes of these proceedings, we deem it appropriate and proper not to make any determination on the validity of the elections held since it would be open to any person aggrieved to take recourse to the remedies provided by the

Maharashtra Co-operative Societies Act, 1960 and the rules framed thereunder. The exercise of the writ jurisdiction for the determination of questions relating to the validity of elections would involve an enquiry into several disputed questions of fact which would not appropriately lie within the parameters of the jurisdiction under Article 226. We, therefore, dispose of the Petition leaving it open to any person aggrieved by the conduct of the election to take recourse to such remedies as are available in accordance with law.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J.